

STATE OF MICHIGAN
COURT OF APPEALS

In re J. M. RODGERS, Minor.

UNPUBLISHED

June 11, 2015

No. 324260

Wayne Circuit Court

Family Division

LC No. 10-492716-NA

Before: SAAD, P.J., and M. J. KELLY and SHAPIRO, JJ.

PER CURIAM.

Respondent-mother appeals as of right the circuit court order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(b)(i), (3)(j), (3)(k)(iii), and (3)(l). Because the trial court did not clearly err in ruling that statutory grounds for the termination of respondent's parental rights were established or that termination was in the child's best interests, we affirm.

Respondent challenges the trial court's finding of statutory grounds to terminate her parental rights.¹ In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000).

Respondent's parental rights were terminated pursuant to MCL 712A.19b(3)(b)(i), (3)(j), (3)(k)(iii), and (3)(l).² The termination of respondent's parental rights was primarily based on

¹ "This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *Id.*

² MCL 712A.19b(3) provides in relevant part:

The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

evidence that she had physically abused the child in a department store restroom. Witnesses heard the sound of someone being hit repeatedly, a child screaming and crying, and respondent threatening the child with future punishment. Photographs documented a large quantity of blood on the child's clothing and in and around the restroom stall. Similarly, the photographs demonstrated that the blood spray travelled a significant distance, suggesting that the child was struck with substantial force. The child was found with a red mark on his nose, a welt on his buttocks, and a broken blood vessel in his right eye. The child made statements and demonstrated, with gestures, the act of being struck in the head, which further substantiated the other witnesses' testimony. After respondent left the restroom with the child, she zipped up his coat in an apparent attempt to conceal the blood spatter and, when subsequently confronted by the police, went through the motions of looking at his clothing before falsely proclaiming that there was no blood on his clothes. This evidence belied respondent's claim that the child's injuries were the result of spontaneously or accidentally developing a nose bleed during the course of a temper tantrum.

There was also evidence of previous physical abuse. At the hospital, the child was found with three round scars on his body. The medical records indicate that these marks were possibly caused by cigarette burns and witnesses testified that the marks were each the size of a cigarette burn. At some time before the events giving rise to the petition, a caregiver questioned respondent about the marks. In response, respondent claimed that they were caused by an accident and the child had scratched a sore. When questioned by the police, however,

(b) The child or a sibling of a child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

(k) The parent abused the child or a sibling of the child and the abuse included 1 or more of the following:

* * *

(iii) Battering, torture, or other severe physical abuse.

* * *

(l) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state.

respondent claimed that the child had come home from daycare with a scratch and the scar was formed when he continued to scratch at the scab. Respondent's contradictory statements regarding the cause of the circular marks circumstantially support the conclusion that the marks were formed by cigarette burns, i.e., physical abuse, as opposed to something more benign.

There was also evidence to support the court's finding that the child would be at risk of harm if returned to respondent's care. Respondent had a long history of violent behavior that, among other things, led to the termination of her parental rights to her eldest daughter in 2007. When the instant child was previously removed from respondent's care in 2010, respondent was again provided with services to address her mental health and violence issues. The fact that the child was again removed from respondent's care in 2013 for abuse demonstrates that respondent did not benefit from the services previously offered. Further, at the time of the current petition, respondent refused to participate in services, including a mental health evaluation and parenting classes. Respondent also never completed the anger management classes that were mandated as a condition of her criminal probation. Because the evidence indicates that respondent has not adequately addressed her anger management and other mental health issues, the trial court did not clearly err by ruling that the child would be at risk of harm if returned to respondent's care.

Finally, it was undisputed that respondent's parental rights to her eldest daughter were terminated in 2007 because of respondent's long-standing history of serious mental instability, assaultive and violent behavior, and a lack of capacity to parent the child.

Accordingly, the trial court did not clearly err by ruling that statutory grounds to terminate respondent's parental rights under MCL 712A.19b(3)(b)(i), (3)(j), (3)(k)(iii), and (3)(l), had been established by clear and convincing evidence.

Respondent also argues that the trial court erred by ruling that termination of her parental rights was in the child's best interests.

"[T]he preponderance of the evidence standard applies to the best-interests determination." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). "In deciding whether termination is in the child's best interest, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). The court may also consider psychological evaluations, the child's age, continued involvement in domestic violence, and a parent's history. *In re Jones*, 286 Mich App 126, 129-130; 777 NW2d 728 (2009).

The child was five years old at the time of the termination hearing. Considering the 2010 petition and removal, the child had been out of respondent's care for approximately two of his five years. The severity of the abuse that precipitated the child's removal is evident by not only the witnesses' accounts of the assault, but the fact that the child continued to be traumatized by the events. The child also has special needs. There was testimony that he was doing well in the foster home and that the likelihood of adoption was very high. No appropriate family members had come forward as a possible alternative placement for the child. Further, it is clear that respondent had not addressed her anger management issues. Over the course of several years, respondent was offered services and, to the extent that she participated in those services, did not

benefit from them. Following the child's second removal, in 2013, respondent simply refused the services offered and failed to comply with the court-ordered treatment related to her probation. The record also indicates that respondent lacked insight into the events that culminated in the termination of her parental rights. Respondent repeatedly denied a history of mental illness and continued to minimize the significance of the events that led to the child's removal.

Relying in part on the recommendation of an evaluating psychiatrist, respondent asserts that she should be provided additional time and services to work toward reunification. Respondent's reliance on this doctor's recommendations is misplaced. The record indicates that, during the evaluation, respondent was not forthcoming and, indeed, misled the doctor. Further, while reasonable efforts to reunify a child and family must be made, reasonable efforts are not required if the parent's rights to the child's sibling have been previously involuntarily terminated. MCL 712A.19a(2)(c). As discussed, it is undisputed that respondent's parental rights to her eldest daughter were involuntarily terminated in 2007. In any event, respondent was offered services and given assistance in pursuing those services, yet refused to participate. Given the evidence presented, the trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ Henry William Saad
/s/ Michael J. Kelly
/s/Douglas B. Shapiro